EXHIBIT "Q"

Pediatrics; People's Exhibit 10, which is [redacted]' records from Seton Health Pediatrics; People's Exhibit Number 11, which is [redacted]' records from his stay at St. Mary's Hospital; and People's Exhibit 12, which is [redacted]' records from his stay at St. Mary's Hospital.

THE COURT: Okay. Thank you. The People may call their next witness.

MS. BOOK: The People call Dr. Ojukwu.

IFEOMA OJUKWU, after first having been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: The sworn witness is Ifeoma Ojukwu, I-F-E-O-M-A; last name, O-J-U-K-W-U.

DIRECT EXAMINATION

BY MS. BOOK:

Q. Good afternoon.

A. Good afternoon.

Q. Could you please introduce yourself to the jury?

A. I am Dr. Ifeoma Ojukwu.

Q. How are you employed?

A. At Seton Health Pediatrics as a pediatrician.

Q. Are you employed anywhere else?

A. Yes. I have my own private practice.

Q. Where is that?

A. It's in Albany.

Q. How long have you been in practice?
A. It's going on 14 years now.
Q. Do you have privileges at any hospitals?
A. With Seton Health Pediatrics, Seton Health.
Q. What hospital is that?
A. St. Mary's Hospital.
Q. Can you tell us about your formal education?
A. Okay. I trained -- I went to medical school at the University of Nigeria. Then I did all of my postgraduate training in the United States. I did my residency at Nassau County Medical Center and also did an infectious disease fellowship at University of Rochester, Strong Memorial.
Q. Can you tell us about your internship and your residency?
A. I did my internship in Nigeria; and as for my residency, I specialized in pediatrics. I did it for about three years, from 1994 to 1997.
Q. And what did you do during your residency?
A. I did various rotations, pediatric floors, Intensive Care Unit, Pediatric Intensive Care Units and emergency rooms.
Q. What was your specialty during your residency?
A. General pediatrics.
Q. What did you do after your residency?
A. I did a pediatric infectious disease fellowship.
Q. And what did you do during that?

A. I did some research in HIV at the University of Rochester in the lab.

Q. When did you first receive your license to practice medicine?

A. In 1997.

Q. In what states are you licensed to practice medicine in?

A. I'm licensed to practice medicine in the State of New York.

Q. And have you been practicing since you were licensed in 1997?

A. Yes, I have.

Q. In addition to being licensed, do you hold any additional certifications?

A. My Pediatric Boards.

Q. Okay. And what does that mean?

A. It means that I took an exam in pediatrics.

Q. How many patients would you estimate that you have treated over the course of your career?

A. I have seen several patients.

Q. How many?

A. Several. Seton Health is extremely busy. On a short day, we can see up to 40 patients between two doctors.

Q. Would you estimate that it's in the thousands that you have treated?

A. Yes.

Q. Have you taught or lectured in your field at all?

A. No, not formally. We do have interns or medical students that did rotations at a time.

Q. Have you ever testified in court before?

A. In the previous proceeding involving this case.

Q. Okay. Let me draw your attention to [redacted] and [redacted]. Are you familiar with [redacted]?

A. Yes, I am.

Q. When did you first become familiar with him?

A. When I did his admission into St. Mary's Hospital from Albany Medical Center.

MS. BOOK: Okay. May I approach, Your Honor?

THE COURT: Yes, you may.

Q. Doctor, I'm going to hand you what's been marked into evidence as People's Exhibits 9 through 12 and, specifically, Seton Pediatric records of [redacted], as well as the St. Mary's records of [redacted]. And these are [redacted]'s records. If you need to refer to those, you may.

A. Thank you.

Q. Do you know when [redacted] was born?

A. May I look?

Q. You may.

A. [redacted] was born [redacted], 2008.

Q. Where was he born?

A. He was born at Albany Medical Center.

Q. Do you know if he was born full term or less than full term?

A. He was born less than full term.

Q. How far along was his mother when he was delivered?

A. Thirty-three weeks gestation.

Q. How early is that?

A. That's about seven weeks early.

Q. What is the ideal time frame at which to deliver a child?

A. Forty weeks gestation.

Q. Is there a secondary time or a less than time that's also deemed acceptable?

A. If they are born post term, it's still acceptable.

Q. What if you were born at, say, 38 weeks or 39 weeks?

A. It's still acceptable. That's full term.

Q. So, at 38 weeks, you are considered full term?

A. Yes.

Q. So, when did you first come into contact with [redacted] Thomas?

A. I first came into contact with [redacted] on May 9, 2008.

Q. Where did you come in contact with him?

A. St. Mary's Hospital.

Q. Okay. If he was born at Albany Medical Center, why

is it that you came into contact with him at St. Mary's Hospital?

A. It's because he was transported back to St. Mary's Hospital for the convenience of the family. At that time, he was already stabilized at Albany Med, and he was transferred back to St. Mary's for feeding and growing.

Q. Is it typical that a baby might be transferred from Albany Medical Center to another hospital?

A. Yes.

Q. When is it that they are able to be transferred from Albany Medical Center to another hospital?

A. Once they have been stabilized and they are no longer critical.

Q. What do you mean by stabilized and no longer critical?

A. You have to make sure that the baby is not breathing on a ventilator and the baby doesn't have any major issues; then you transfer them back, if they are just feeding and growing, so they can be transported back to the hospital closer to where the family lives so they can go see their baby at a more convenient site.

Q. Okay. So, if [redacted] stayed at Albany Medical Center from the 4th through the 9th, is that a long stay at a pediatric hospital or is that a shorter stay at a pediatric hospital?

A. Short.

Q. Now, how is it that you met him at St. Mary's Hospital?

A. I was on call on that day. I was working in the office, and then I got a call from the neonatologist saying that the babies are coming back.

Q. Why is it that you would meet babies at the hospital?

A. Because I have privileges there. And if a child has been stabilized, then the family has the right to have their baby transported back to the hospital.

Q. Okay. And once the babies are at a different hospital, would a pediatric doctor look at them on a regular basis?

A. Yes. In this case specifically, it's a neonatologist. They were in the Neonatal Intensive Care Unit.

Q. What was [redacted]s condition when he was transferred to St. Mary's Hospital?

A. [redacted] was stable.

Q. Were you able to learn how he was delivered?

A. Yes, from their records.

Q. How was [redacted] delivered?

A. [redacted] was delivered vaginally.

Q. Did you learn of any complications with his birth?

A. At the time of his birth -- can I just take a second? This is [redacted]s, actually. Following his birth, going by my

records, he was placed on antibiotics for about 48 hours to rule out any form of infection, and then he did receive some free flow oxygen.

Q. Okay. How much did [redacted] weigh at birth?

A. [redacted] s weight was recorded as 2110 grams.

Q. What does that translate into in pounds?

A. About four pounds, ten ounces.

Q. Did you have any health concerns for [redacted] at the time that he was transferred to St. Mary's Hospital?

A. No, I did not.

Q. Are you familiar with the term trivalvular pulmonary stenosis?

A. Yes.

Q. What is that?

A. It's a form of heart murmur, whereby the pulmonary valve is slightly narrow.

Q. Did [redacted] have a trivalvular pulmonary stenosis?

A. Yes, he did.

Q. Was that of concern to you?

A. No, because the cardiac pediatrician examined him and scheduled him for follow up in six months.

Q. So, if the next appointment was not for six more months, was there anything special that had to be done with respect to [redacted] s care with regard to that trivalvular pulmonary stenosis?

A. No.

Q. Did [redacted] have any birth marks?

A. Yes, he did.

Q. What birth mark did he have?

A. He had a mongolian spot on his back in the sacral area, his buttocks.

Q. What is a mongolian spot?

A. It's just a pigmented patch that you see in people of black descent.

Q. Once [redacted] was transferred to St. Mary's Hospital, was he feeding appropriately?

A. Yes. He was feeding and he had NG tube feedings and orally.

Q. What is an NG tube feeding?

A. It's a tiny tube that's put in through the nose into the GI tract to assist with feedings because he's premature.

Q. And you said he was feeding orally. Does that mean he was taking a bottle, as well?

A. Right, little amounts, because he's preemie.

Q. Was he growing appropriately at St. Mary's Hospital?

A. Yes, he was.

Q. And how was [redacted]?

A. [redacted] was stable.

Q. Was he also feeding and growing appropriately?

A. Yes, he was.

Q. Were they discharged from St. Mary's Hospital at the same time?

A. Yes, they were.

Q. On what date were they discharged from St. Mary's Hospital?

A. They were discharged from St. Mary's Hospital on May 22, 2008.

Q. How much did [redacted] weigh when he was discharged from St. Mary's Hospital?

A. His discharge weight was 2551 grams.

Q. And what does that translate into in pounds?

A. About five pounds.

Q. So, is that an okay weight to be discharged and go home?

A. Yes.

Q. Did [redacted] come to Seton Pediatrics where you work for regular checkups after being discharged from St. Mary's?

A. Yes, he did.

Q. As of September of 2008, was [redacted] up to date on all of his immunizations?

A. Yes. [redacted] was up to date on all his immunizations as of September of 2008.

Q. First I want to draw your attention to May 27, 2008. Did [redacted] come to Seton Pediatrics on that date?

A. Yes, he did.

Q. Why did he come to Seton Pediatrics on May 27, 2008?

A. He came for his initial visit following his discharge from St. Mary's Hospital.

Q. How was his health on that date?

A. His health was stable.

Q. And did you record his weight and height and head circumference?

A. Yes.

Q. Could you tell those to me?

A. Certainly. His weight was six pounds, five ounces. His height was 18 and a half inches and his head circumference was 34 centimeters.

Q. Okay. So, do you ever plot this on a growth chart?

A. Yes, we do.

Q. What is a growth chart?

A. The growth chart serves as a guide to show us how the baby is growing. Everybody follows their own percentiles.

Q. Okay. And is this growth chart compared against other individuals that are the same age?

A. Yes.

Q. Okay. And as far as [redacted]s head circumference, where did it fall on the growth chart on May 27, 2008?

A. [redacted]s head circumference per percentile fell just below the fifth percentile.

Q. And what does that mean?

A. In premature babies, they come out small. So, this is in line with his prematurity. It doesn't mean anything grave or bad.

Q. And would that mean that 95 percent of babies his age would have a larger head circumference than him?

A. If you are talking about full-term babies?

Q. You tell me.

A. Right. If it's a full-term baby, the head circumference most likely will fall within the percentile, maybe closer to the 50 percentile, maybe more; but in this case, he's a premature baby, and his head circumference still is in the lower percentiles, and we expect it to improve as he grows.

Q. Now, I'm going to call your attention to June 10, 2008. Did [redacted] come to Seton Pediatrics on that date?

A. Yes, he did.

Q. Why did he come on that date?

A. He came for his one-month well child checkup.

Q. And how was his health on that date?

A. On that date, his health was stable.

Q. And did you again take a recording of his height and weight and head circumference?

A. Yes, we did.

Q. What were those recordings?

A. His weight was six pounds, 12 ounces. His height was

20 inches, and his head circumference was 36.5 centimeters.

Q. Where did that put [redacted] on the growth chart with respect to his head at that point?

A. At that point, his head already went up closer to the tenth percentile.

Q. Tenth percentile. Okay. I want to draw your attention to July 10, 2008. Did Seton Pediatrics receive a message from Wilhemina Hicks?

A. Yes.

Q. What was it regarding?

A. It was regarding the twins not having any bowel movement in a few days but acting well.

Q. And what advice, if any, was given?

A. Okay. She was advised that it's not necessary to have a bowel movement daily. You may go as long as four to five days, as long as the baby is content, and she was told to give brown sugar water and also to go to the emergency room after hours if there was any further problems.

Q. Now, I want to draw your attention to July 23, 2008. Did [redacted] come to Seton Pediatrics on that date?

A. Yes, he did.

Q. How was his health on that date?

A. He was stable.

Q. Did you again record his height and weight and head circumference?

A. Yes, we did.

Q. Could you tell us those measurements?

A. His weight was ten pounds. His height was 22 inches, and his head circumference was 38 and a half centimeters.

Q. And what did his head circumference translate into on the growth chart?

A. His head circumference translated to the 25th percentile.

Q. When was [redacted]s next appointment scheduled for?

A. I do not have the exact date, but his next appointment is supposed to be two months after his two-month appointment for his next set of shots.

Q. So, approximately September 23, 2008?

A. Yes.

Q. And did you ever see [redacted] again after that July 23rd visit?

A. No, we did not.

Q. Now, for a moment, I want to turn your attention back to [redacted]s stay at St. Mary's Hospital. Were there ever any intracranial tests done while at St. Mary's Hospital?

A. Yes.

Q. What is an intracranial test?

A. In this case specifically, we are talking about a sonogram, a head sonogram, which is a test that is usually ordered in premature babies to make sure there's no bleed,

bleeding in the brain.

Q. Why are tests ordered on premature babies to make sure that there's no bleeding in the brain?

A. Due to all the -- several changes that happen after birth. You may have changes, so you need to know what state the child is in before they leave.

Q. Okay. And what date was this test done?

A. This test was done May 14, 2008.

Q. Is that far enough after the birth that you can ensure that it would be accurate?

A. Yes.

MR. COFFEY: Object to this, unless she knows, if it's within her area of expertise.

THE COURT: Say again.

MR. COFFEY: I object unless it's in her area of expertise.

THE COURT: Objection as to foundation?

MR. COFFEY: Yes.

MS. BOOK: Your Honor, if I may be heard, Dr. Ojukwu said that she orders these routinely as a pediatrician. She works with babies in the hospital and after they are born when they are premature. She orders these to make sure when a premature baby is born that there are no bleeds in the brain, and she said the reason that they order them when they do is to make sure that

there aren't any -- that there isn't any bleeding in the brain after a certain period of time.

MR. COFFEY: If I wanted Ms. Book to testify, I would ask her. I'm objecting to the foundation.

THE COURT: I understand. I'm allowing her to respond. Go ahead, Ms. Book.

MS. BOOK: Thank you, Your Honor. She stated on direct that she orders them when she does to make sure that there's a sufficient amount of time to make sure that that has been resolved. So, Your Honor, I would submit that Dr. Ojukwu is qualified to answer this question.

THE COURT: The objection is overruled.

MS. BOOK: Thank you. Judy, could you read back my last question, please?

(Whereupon, the pending question was read back by the Reporter.)

Q. If you could answer that, Dr. Ojukwu.

A. Yes.

Q. Why is that?

A. Like I said, the babies may go through changes after they are born, so we need to make sure they don't have an intracranial bleed before they go home, and the neonatologist has given us recommendations of what to expect, what to do.

Q. Did both [redacted] and [redacted] receive a head sonogram?

A. Yes. They both did receive a head sonogram.

Q. On what date?

A. They both received the sonogram on May 14, 2008.

Q. Can you explain to us how that is performed?

A. Usually, a sonographer uses a probe, and they do the test over the anterior fontanelle, which serves as a window. The anterior fontanelle is what is called the soft spot of the brain, so it serves as a window into the brain. So, they use a probe to look in, within, to see if there's been any changes, any bleeds on the brain.

Q. Why does the anterior fontanelle serve as a window?

A. It serves as a window because the bone, the scalp, the bony part of the scalp hasn't fully developed, and that brings growth. So, research has been done. It's been documented. Research has been done showing that you can do the test successfully.

Q. So, could you look through my scalp, through my anterior fontanelle and see into my brain?

A. No.

Q. Why not?

A. Because your fontanelle is already closed. It closes between nine to 12 months.

Q. Okay. So, why is it on a baby that it's a good window?

A. Because it's not filled with bone yet, you know. That's why I said it's called a soft spot, the anterior

fontanelle, and you can use the probe, you know, and look in to see if there's any bleed or any intracranial abnormality.

Q. Does it provide a sufficient enough window to view the inside of the brain?

THE COURT: Excuse me one second, Doctor. Do you have a phone that's on?

THE WITNESS: Sorry about that.

Q. So, at that time, is it sufficient through a sonogram to see into a baby's brain and check for any bleeds?

MR. COFFEY: Object to outside her qualifications. There's no testimony she's ever performed one.

THE COURT: Sustained.

Q. Were you able to get the results of the tests performed on [redacted]?

A. Yes.

Q. And what were the results of that test?

A. On [redacted], it states no significant evidence of intracranial abnormality detected.

Q. What does that mean?

A. It means that they didn't see any bleeds, intracranial bleeding or abnormality.

Q. Were your able to get the results of [redacted] s test?

A. Yes.

Q. And this is the test performed on 5/15/2008?

A. Yes.

Q. And what were the results of those tests?

A. It states no significant evidence of intracranial abnormality detected.

Q. What does that mean?

A. It means they didn't see any intracranial bleeding or any abnormality.

MS. BOOK: May I have one moment, Your Honor?

THE COURT: Sure.

(Brief pause in proceedings.)

MS. BOOK: Thank you, Your Honor. No further questions.

THE COURT: Mr. Coffey?

MR. COFFEY: I may need a short break, but I'm going to start first.

THE COURT: That's fine.

CROSS-EXAMINATION

BY MR. COFFEY:

Q. Doctor, good afternoon.

A. Good afternoon.

Q. I know you have been waiting outside, so we appreciate that. Doctor, the skill and the ability of a certain sonogram to pick up an intracranial bleed, you are not prepared to give any opinion on that; correct?

A. No.

Q. Do you agree? In other words, whoever ran the sonogram -- is a sonogram and ultrasound the same thing?

A. Yes.

Q. So, the skill of the person doing it or the accuracy of the machine he or she is using, you don't know for sure; correct?

A. I can't give an opinion on that, no.

Q. All right. Now, let's go back to the mom who delivered the two infants. And she had some problems before she delivered; correct?

A. Yes.

Q. She had what's called preeclampsia; correct?

A. Yes.

Q. Tell the folks of the jury what preeclampsia is.

A. Preeclampsia is when the mother's blood pressure is elevated and she's also spilling protein in the urine; and as such, it can cause the mother to have a seizure if not controlled.

Q. Now, a mom who has preeclampsia -- and if you can't tell me, that's perfectly okay, but if you can -- would that mom who had preeclampsia, would a child be more susceptible to an intracranial bleed?

A. I can't tell you that.

Q. All right. Now, the mom also had premature ruptured membranes; correct?

A. Yes.

Q. Her water broke before it was supposed to; correct?

A. Yes.

Q. Do you know if that would make her twins or one of the twins more susceptible to an intracranial bleed?

A. I can't say to that.

Q. The mom also had meconium -- do you know if Mom had meconium at the birth? Let me do this. Just assume for a moment that she did. Okay? And that would show some fetal distress at birth; correct?

A. If a child had meconium.

Q. And they can treat that but, nonetheless, there is some distress; correct?

A. Right, yes.

Q. And the mom was obese. Were you aware of that?

A. Yes.

Q. Okay. And that can also create problems for the children after birth; correct?

A. Not necessarily. Everything depends.

Q. But you take all these factors, any one of which if you add them together, they could potentially create some problems with the children; right?

A. Potential risk factors.

Q. Okay. And one risk factor, potentially, could be intracranial bleeds, a risk factor. Would that be correct?

A. Probably an outcome of a risk factor, I'm thinking.

Q. Fair enough. I want to ask you something else. There's a reason why we want babies to be born at full term, a lot of reasons; right?

A. Yes.

Q. As you go through the first trimester, second trimester, third trimester, the baby not only begins to grow and develop inside the mom's womb, but she begins to give things through the placenta to her babies; correct?

A. Yes.

Q. To help them live a healthy life; correct?

A. Yes.

Q. Now, these children, these twins, were born at 33 weeks; right?

A. Yes.

Q. The last seven weeks, five to seven weeks of the child's life, going from 33 weeks to 40 weeks, in terms of what that child or children get from their mother is very important; isn't it?

A. Yes.

Q. We just don't say no big deal, whether you have them at 30 weeks, 27 weeks, 33 weeks. You want that child to progress very nicely to 40 weeks; correct?

A. Yes.

Q. And in the last five to seven weeks of the child's

gestation period, that's critical in terms of the immune system, isn't it, because the mom at that point is sending through her system antibodies to those little babies; correct?

A. I can't give you a finite time.

Q. Well, the last part of the gestation is important for the child's immune system because he or she is getting antibodies; aren't they?

A. Yes. They are getting antibodies, but every child is different and every situation is different.

Q. I understand. Some children can be born at 24 weeks and they can be fine; right?

A. Yes.

Q. But 99 percent of the children born at 24 weeks are going to have some problems; aren't they?

A. Yes.

Q. And you would agree with me -- let me ask another way. The last five to seven weeks of gestation, what is the mother giving to that child during the five to seven weeks?

A. Yes. The mother is giving the child some antibodies once they pass the two-month mark, which a neonatologist can tell you a little more, as far as maturity and the antibodies.

Q. Okay. Now, once the babies are born, there's a system set up by doctors, I think nationally, that a child will get shots on a periodic basis; correct?

A. Yes.

Q. And those shots are to serve as a guard against certain diseases; correct?

A. Yes.

Q. Now, the first shot that a baby gets and [redacted] got, how old was he when he got that shot?

A. He got his hepatitis B vaccine.

Q. What kind of vaccine?

A. Hepatitis B vaccine.

Q. And that's to protect him against hepatitis?

A. Yes, liver disorder.

Q. So, what was the next shot that [redacted] got?

A. The next set of shots he got was on July 23, 2008. He got his second hepatitis B. He got his first diptheria, tetanus and pertussis, which is whooping cough. He got his meningitis B vaccine. He got his polio vaccine, and he got his pneumococcal vaccine, streptococcus pneumonia vaccine and his Rotavirus vaccine.

Q. Let's talk about the pneumococcal vaccine. That is a separate shot. I mean, that's a -- separate antibodies going into the baby; correct?

A. Yes.

Q. And there's a reason why that shot is given, correct, that vaccine; right?

A. Yes.

Q. Because streptococcus pneumoniae -- is it

streptococcus pneumoniae?

A. Yes, streptococcus pneumoniae.

Q. That's a type of bacteria; right?

A. Yes.

Q. And that bacteria can be lethal to a child, typically one who has not been properly immunized; correct?

A. Yes, so can some of the others.

Q. I understand. I'm just staying with the streptococcus pneumoniae vaccine. Okay?

A. Yes.

Q. And there's a series of four shots over the course of the baby's what, year, year and a half of life?

A. Yes.

Q. And the first shot really doesn't do much, except it just -- the body begins to get a memory of these antibodies coming in; correct?

A. Yes.

Q. Do you agree with me?

A. The first shot is the start, yes.

Q. It's a start. That's certainly not the end. That's the alpha, not the omega; correct? Well, it's the beginning, not the end; correct?

A. Yes.

Q. Babies who do not have that pneumococcal series of shots are at far greater risk to develop a bacteria,

bacteremia, sepsis and septic shock than a child who gets those shots; isn't he?

A. Yes. You are saying babies that do not get the shots at all?

Q. Well, even the one shot. The one shot just gives you something, but you have a series of shots; correct?

A. It gives you something, but it's still something.

Q. It gives you something?

A. Uh-huh.

Q. But there's a series. Even a child who has one shot, it's better than none; correct?

A. Right.

Q. But my point is that there's a purpose in giving the four shots, because you are building up the immune system for a baby so that he can fight off this potential bacteria; correct?

A. Yes.

Q. And this is a baby who was two months premature. So, this baby also does not have a full immune system that he would have if he were full term; correct?

A. I will defer that to an immunologist, because when twins are about to be born and there's a problem, a lot of changes go on in the baby to hasten, maybe, maturity. So, we really can't say for sure. I can't say definitely.

Q. Would you refer them to a pediatric --

A. Immunologist.

Q. Excuse me. Would you defer also to a pediatric infectious disease expert in that area?

A. If the child had an infection, if there was a concern for infection, but Albany Med addressed it at birth initially.

Q. Doctor, let me go back to your testimony. The child is born seven weeks premature. The child, would you agree, does not have antibodies that he would have at 40 weeks; correct?

A. Does not have full-blown antibodies.

Q. Correct?

A. Yes.

Q. Okay. When the child is two months premature (sic), he gets a shot, as [redacted] did, in July. He gets a pneumococcal shot, one shot; correct?

A. Yes, he did.

Q. As he then gets into September, he has -- this is a premature baby who has had one shot; correct?

A. Yes.

Q. That baby, [redacted], at that point is at risk, isn't he, for pneumococcal infection, a bacteremia; isn't he?

A. He's at risk for infection.

Q. Correct. And one of those infections is a bacteremia; isn't it?

A. Yes.

Q. And bacteremia is a bacteria that, if it gets in your

blood, it can colonize, grow into a sepsis and ultimately result in septic shock. That is possible; isn't it?

A. We are talking hypothetically?

Q. Pardon?

A. We are speaking hypothetically; right?

Q. Maybe we are not. Actually, we are not.

A. I mean we are talking hypothetically at this point. If I'm not --

Q. Actually, Doctor, this baby died from septic shock. Are you aware of that?

MS. BOOK: Objection.

THE COURT: Sustained.

Q. Are you aware of what this baby died from?

A. I can refer to the records.

Q. Are you aware of it?

A. I can refer to the records.

Q. Doctor, my question is --

A. So I can say what's written in the record. I don't want to guess or say something --

Q. Doctor, I'm simply asking you if you are aware of the fact that [redacted] when he died was diagnosed as being in septic shock. Are you aware of that? If you are not, you can tell us that, as well.

A. I really just would prefer to look and see what was written in the Albany Med Pathology Report.

Q. If I were to tell you that the baby was diagnosed with septic shock, Doctor, consistent with bacteremia, would one of the purposes of a staphylococcal series of vaccines, the hope would be to prevent bacteremia resulting in septic shock? Would you agree with that?

A. The purpose of giving the streptococcus pneumoniae vaccine is to prevent infection from streptococcal pneumonia.

Q. Doctor, tell me, you indicated -- you were asked a series of questions about [redacted] and [redacted] being seen over the summer of 2008, and I think you read from those records. Did you actually see [redacted] on those occasions, or did someone in the hospital see him?

A. It's a big group practice, so one of my colleagues seen them, as well.

Q. All right. You are able to read medical records from other hospitals; correct?

A. If it's given to us, yes.

Q. All right. Now, after the summer - I think in July - St. Mary's or Seton Health did not see [redacted] and [redacted] again. Is that your understanding?

A. That's my understanding.

Q. All right. Do you know whether [redacted] was seen at Samaritan Hospital about the second week of September? Are you aware of that?

A. We don't have that record in his clinic chart.

Q. I understand. I didn't know if you learned this in the course of the last couple of years. Do you know whether he was seen at Samaritan Hospital in September? If you don't, that's okay. You can tell me that.

A. I don't.

Q. Okay. He was due -- this is [redacted] and [redacted]; I guess both of them. They were due to get shots, their second series of shots, they were due to get those when?

A. Like I stated, it should be two months from the last visit, and his last visit was July 23rd.

Q. So, that would be September 23rd?

A. Yes.

Q. And what was this -- and I'm talking about the pneumococcal shot now. I don't care about the others at the moment. What was the purpose of giving him that shot in September?

A. The purpose of giving him that shot is to continuously boost him up so that his immune system can recognize any potential infections when they come in.

Q. And if they recognize it, they will do what?

A. They will try to prevent it. The white blood cells will try to prevent it.

Q. All right. And then there would be a third series of shots; correct?

A. Yes.

Q. When would they be administered?

A. Hypothetically, it should be two months from September. So, probably November, ideally.

Q. And that would be for all children who are born, whether they are premature or full term; in other words, two months, four months, six months from birth. Correct?

A. Yes.

Q. Now, six months, you are getting a third series; correct?

A. Yes.

Q. And you don't give these shots just because you have nothing better to do; right?

A. No.

Q. There's a reason why these kids are getting these shots; correct?

A. Yes.

Q. And in the medical profession and you, as pediatricians, are aware that one shot, while something, certainly is not going to be enough in all likelihood to fight off a bacterial infection; correct? It's not enough?

A. It's not enough. We expect to give more shots.

Q. And if you've got a premature child, even more reason why you want to keep giving him those shots; correct?

A. Yes.

Q. And the second shot comes after the first, the third

shot after the second. It's a series of shots building up his system, immune system; correct?

A. Yes.

Q. And then when is the fourth shot given?

A. We give the fourth shot at one year of age.

Q. Now, why do you wait a year? Why do you wait until a year?

A. It's the way it's been planned by the American Committee on Immunization Practices and the AAP. We space it out. They have done studies. Makers of the vaccine have done studies and immunologists, and they work with that to come up with a timetable to give the vaccine.

Q. So, somebody in America, the American Academy of Pediatricians, has determined that in order for a child to live a long and healthy life with regard to the shots, they give them at two months, four months and six months and a year, and they have tested millions of children, if not thousands, millions of children to come up with this plan; right?

A. Yes.

Q. And it would not be a good idea, would it, for you as a pediatrician to say to a parent, "We will give him one shot and forget about the rest." You wouldn't do that; would you?

A. No, I wouldn't.

Q. In fact, you tell the parents, "I want to make sure he gets all four shots." Right?

A. Yes.
Q. Not two, not three, but four; correct?
A. Yes.
Q. Okay. You told us that [redacted] had a heart murmur?
A. Yes.
Q. And did you know -- again, if you don't, you can tell me that. Was he going to grow out of that, if you know, or don't you know; or would he have that for life?
A. Not necessarily. The cardiologist had done an echocardiogram and it was deemed an insignificant murmur.
Q. Okay. Would that have an effect on his health in his first year of life?
A. Not after he took care of him, no.
MR. COFFEY: One minute.
Q. Doctor, in medicine, what does a portal mean? Do you know my word, portal?
A. Portal in terms of what?
Q. Well, let's assume for the moment that we have a little baby -- let's talk about an infection, streptococcal infection, pneumonia infection. Portal means an opening. Bacteria can come in through the mouth; correct?
A. Bacteria can come in through any orifice.
Q. Right. And you have treated in your practice a lot of kids for that; correct?
A. Yes.

Q. And if it gets in through the lungs, generally, the child can respirate - in other words, he can breathe in somehow that bacteria - right, from another child or whatever; correct?

A. If we are talking about respiratory droplet infection.

Q. All right. Now, if a child has an opening for whatever reason, say on his chin, and he has a break in the skin on his chin, his cheek, it can come in through there; can't it?

A. Yes.

Q. And for a child, for example, who is premature who has had only one shot, if he develops a break in his skin in the cheek, he is at much higher risk for that bacteria to come in through that cheek than another child; isn't he?

A. Yes. He would show signs of infection.

Q. Okay. Ultimately, he would show signs?

A. Yes.

MR. COFFEY: That's all I have, Judge.

THE COURT: Ms. Book, any redirect?

MS. BOOK: Yes, Your Honor, just one moment.

THE COURT: Take your time.

REDIRECT EXAMINATION

BY MS. BOOK:

Q. Dr. Ojukwu, you were just asked about a break in the skin and if an infection were to come in through that. And you

said a child would show signs of infection?

A. Yes.

Q. What type of signs?

A. The child will have a fever. They won't act fine. They won't eat. In a young child, they will probably have loss of appetite, high fever, could be irritable.

Q. When you say a high fever, what do you mean by a high fever?

A. It can go as high as 102, 103. That's what I mean by high fever. It would be significant enough to draw your attention to it.

Q. Would you expect to see an infection at the site?

A. There would be inflammation, redness, and you will see what happened.

Q. Okay. Dr. Ojukwu, are there different levels of prematurity?

A. Yes, but I can't give you the exact gestational ages. The neonatologist can tell you. There's extreme premature, very premature, preemie, and the ones closer to the date.

Q. Do you know what the earliest in terms of weeks is considered full term?

A. Thirty-seven weeks.

Q. So, at 37 weeks, a baby is considered full term?

A. Yes.

Q. Is there a difference between a baby who is born at

24 weeks and a baby who is born at 33 weeks?

A. Yeah. Like I said, the early ones are called extreme premature babies.

Q. The vaccine that Mr. Coffey asked you about - two months, four months, six months, one year - is that the schedule for all children?

A. Essentially, yes.

Q. So, essentially, are all children at risk, if they have only had one vaccine at two months, of going to day care and --

MR. COFFEY: Leading.

Q. -- and becoming septic at two and a half months?

THE COURT: Sustained, leading.

Q. Are all children at a greater risk of infection between two and four months?

MR. COFFEY: Same objection.

THE COURT: Overruled.

A. Yes. All children are at risk of infection.

Q. Okay. And are we seeing a greater outbreak of death in children between two and four months because they are not having that second shot during that time period?

MR. COFFEY: Object as irrelevant.

THE COURT: Sustained.

MS. BOOK: Your Honor, I would argue that this is relevant. It was asked by Mr. Coffey on

cross-examination about the buildup of the immunities from the vaccination, and I'm asking the Doctor, in her experience as a pediatrician, if she sees an increase in death between two and four months when they haven't had the second series of the shot yet or the third and fourth series.

THE COURT: I understand your point. The objection is sustained.

Q. If I were to tell you that [redacted] had a bilateral subdural hematoma and the autopsy report says that he died due to head trauma, would one vaccine or four vaccines make any difference in his death?

MR. COFFEY: Object. There's no foundation for this.

MS. BOOK: Mr. Coffey asked on his cross-examination if he were to tell her that he died of sepsis and asked her to make opinions based on that.

THE COURT: The objection is overruled.

Q. So, Dr. Ojukwu, if I were to tell you that [redacted] had bilateral subdural hematomas and the autopsy report says that head trauma was the cause of [redacted]s death, would one vaccine or four vaccines have anything to do with this?

A. Hypothetically speaking, if we say that a cause of death is from a head trauma, it has nothing to do with the vaccines, one vaccine or two vaccines or three vaccines, if we

are saying head trauma categorically.

MS. BOOK: Thank you. Nothing further.

RECROSS-EXAMINATION

BY MR. COFFEY:

Q. And if were to tell you that the person who did the autopsy has testified in 800 cases for the prosecution --

MS. BOOK: Objection.

MR. COFFEY: I would like you to answer that, since Ms. Book would like to answer it. In light of the fact that she talked about subdural hematomas by a pathologist who is employed by Rensselaer County who uniformly testifies --

THE COURT: The objection is sustained.

MR. COFFEY: All right. That's all I have.

THE COURT: You can step down. Thank you. Attorneys approach off the record, please.

(Discussion off the record.)

THE COURT: All right. Members of the jury, we are going to take a 15-minute break at this point in time. During the break, please don't discuss the case. Don't read or listen to any media accounts of the case. Don't conduct any research about this trial. Don't request or accept any payment in return for supplying information. Do not form any judgments or opinions about this case. If anyone attempts to improperly influence you, you must